AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF KOREA AND THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA ON THE RECIPROCAL PROMOTION AND PROTECTION OF INVESTMENTS

The Government of the Republic of Korea and the Government of the Republic of Bolivia (hereinafter referred to as the "Contracting Parties"),

Desiring to strengthen the economic cooperation between both States on the basis of international law and mutual trust,

Recognizing the important complementary role of foreign investment in the economic development process and the right of either Contracting Party to determine this role and to define the conditions under which foreign investment would participate in this process,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "nationals" shall mean:

(a) With respect to the Republic of Korea, physical persons who are considered to be nationals of the Republic of Korea in accordance with its laws,

(b) With respect to the Republic of Bolivia, physical persons who, according to its Political Constitution and the laws based thereon, are considered to be Bolivian nationals.

(2) The term "companies" shall mean:

(a) With respect to the Republic of Korea, juridical persons or business associations, whether or not for pecuniary profit, constituted or incorporated in the territory of the Republic of Korea and existing in accordance with its laws,

(b) With respect to the Republic of Bolivia, societies, corporations and firms constituted according to the laws valid in its territory.

(3) The term "investments" shall include every kind of asset and particularly:

(a) Movable and immovable property as well as any other rights in rem, such as charges on real estate, mortgages, liens, or pledges;

(b) Shares, stocks and debentures of companies, and certificates or other kinds of participation in companies;

(c) Claims to money which has been used to create an economic value or entitlements of economic value;

(d) Copyrights, industrial property rights (such as patents of inventions, utility models, industrial designs or models, trade or service marks, trade names, indications of source or appellation of origin), knowhow and goodwill; and

(e) Concessions under public law, including concessions to search for, extract or exploit natural resources as well as all other rights given by law, by contract or by decision of the authority in accordance with the law.

(4) The term "returns" shall mean the amounts yielded by an investment and, in particular, shall include profit, interest, capital gains, dividends, royalties or fees.

(5) The term "territory" shall mean:

(a) With respect to the Republic of Korea, the territory over which the Republic of Korea has sovereignty or jurisdiction,

(b) With respect to the Republic of Bolivia, all the territory which is under the sovereignty and jurisdiction of the Bolivian State.

Article 2. Promotion and Reception of Investments

(1) Each Contracting Party shall in its territory promote, as far as possible, investments by nationals or companies of the other Contracting Party and admit such investments in accordance with its laws and regulations.

(2) When a Contracting Party shall have admitted an investment on its territory, it shall grant the necessary permits in connection with such an investment and with the carrying out of licensing agreements and contracts for technical, commercial or administrative assistance. Each Contracting Party shall, whenever needed, issue, as far as possible, the necessary authorizations concerning the activities of consultants and other qualified persons of foreign nationality related to investment.

Article 3. National Treatment and Most Favoured Nation Treatment

(1) Each Contracting Party shall protect within its territory investments made in accordance with its legislation by nationals or companies of the other Contracting Party and shall ensure fair and equitable treatment of the investments and returns of those nationals or companies. This treatment shall not be less favourable than that granted by each Contracting Party to investments made within its territory by its own nationals or companies, or than that granted by each Contracting Party to the investments made within its territory by nationals or companies of any third State, if this latter treatment is more favourable.

(2) Each Contracting Party shall accord to nationals or companies of the other Contracting Party, as regards the management, maintenance, use, enjoyment, extension, sale and, should it so happen, liquidation of such investments, treatment which is fair and equitable and not less favourable than that which it accords to its own nationals or companies or to the nationals or companies of any third State.

Article 4. Exceptions

The treatment of the most favoured nation mentioned in Article 3 of this Agreement shall not apply to privileges which either Contracting Party accords to nationals or companies of a third State because of its membership in, or association with a free trade area, a customs union or a common market, or because of an agreement between that Contracting Party and a third State on avoidance of double taxation.

Article 5. Free Transfer

(1) Each Contracting Party, in whose territory investments have been made by nationals or companies of the other Contracting Party, shall grant those nationals or companies the free transfer of the payment relating to these investments, namely:

(a) Of interests, dividends, benefits and other current returns;

(b) Of repayment of loans;

(c) Of amounts assigned to cover expenses in relation to the management of the investment;

(d) Of royalties and other payments deriving from rights enumerated in Article 1, paragraph 3), sub-paragraphs c), d) and e) of this Agreement;

(e) Of additional contributions of capital necessary for the maintenance or development of the investment; and

(f) Of the proceeds of the sale or of the partial or total liquidation of the investment, including possible increment values.

(2) The transfer mentioned in paragraph 1) of this Article shall be made in freely convertible currency at the rate of exchange applicable on the date of transfer, unless otherwise agreed by the investor and the Contracting Party.

Article 6. Expropriation

(1) Neither of the Contracting Parties shall take, either directly or indirectly, measures of expropriation, nationalization or

any other measure having the same nature or the same effect (hereinafter referred to as "expropriation") against investments belonging to nationals or companies of the other Contracting Party, unless the measures are taken in the public interest, and for the social benefit, on a nondiscriminatory basis, under due process of law, and provided that provisions be made for prompt, effective and adequate compensation. Such compensation shall amount to the market value of the investment expropriated immediately before expropriation or impending expropriation became public knowledge, shall include interest from the date of expropriation, shall be settled in a freely convertible currency, shall be paid without delay to the person entitled thereto, without regard to its residence or domicile, and shall be freely transferable.

(2) The national or company affected shall have a right, under the law of the Contracting Party making the expropriation, to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in paragraph 1) of this Article.

(3) Where a Contracting Party expropriates the assets of a company which is incorporated or constituted under the law in force in any part of its own territory, and in which nationals or companies of the other Contracting Party own shares, it shall ensure that the provision of paragraph 1) of this Article are applied to the extent necessary to guarantee prompt, adequate and effective compensation in respect to their investment to such nationals or companies of the other Contracting Party who are owners of those shares.

Article 7. Compensation for Losses

(1) The nationals or companies of one Contracting Party whose investments have suffered losses due to a war, or any other armed conflict, revolution, state of emergency, rebellion, revolt, insurrection or riot, which took place on the territory of the other Contracting Party shall benefit, on the part of the latter from a treatment in accordance with Article 3 of this Agreement as regards restitution, indemnification, compensation or other settlement.

(2) Without prejudice to paragraph 1) of this Article, nationals or companies of one Contracting Party who in any of the situations referred to in that paragraph suffer losses in the territory of the other Contracting Party from:

(a) Requisitioning of their property by its forces or authorities, or

(b) Destruction of their property by its forces or authorities which was not caused in combat action or was not required by the necessity of the situation, shall be accorded restitution or adequate compensation. The resulting payments shall be freely transferable.

Article 8. Repatriation of Investment

(1) Each Contracting Party shall ensure that the national or company of the other Contracting Party are allowed full freedom and facilities in the repatriation of capital on his or its investments subject to the right of the Contracting Party to impose reasonable restrictions for temporary periods to meet exceptional financial or economic situations.

(2) The capital allowed to be repatriated shall include returns accruing from or in relation to the investment and also the proceeds arising out of sale of the assets in the event of liquidation or transfer.

(3) As regards the transfer of capital to be repatriated, Article 5 of this Agreement shall be applied mutatis mutandis.

Article 9. Extension of Application of the Agreement

(1) The present Agreement shall also apply to investments in the territory of a Contracting Party made in accordance with its legislation by nationals or companies of the other Contracting Party prior to the entry into force of this Agreement.

(2) This Agreement shall in no event be applicable to disputes which have arisen prior to its entry into force.

Article 10. More Favourable Provision

Notwithstanding the terms set forth in the present Agreement, more favourable provisions which have been or would be agreed upon by either of the Contracting Parties with nationals or companies of the other Contracting Party are applicable.

Article 11. Subrogation

Where one Contracting Party or an agency designated by it has granted any financial guarantee against non-commercial risks in regard to an investment by a national or company in the territory of the other Contracting Party, the latter shall

recognize the rights of the former Contracting Party by virtue of the principle of subrogation to the rights of the investor when payment has been made under this guarantee by the former Contracting Party or an agency designated by it.

Article 12. Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) All kinds of disputes, with respect to investment between one Contracting Party and a national or company of the other Contracting Party, shall be settled through consultations.

(2) If such disputes cannot be settled in accordance with the provision of paragraph 1) of this Article within six months from the date of request for settlement, the disputes shall be submitted to:

(a) The competent court of justice of the Contracting Party for decision, or,

(b) The International Center for the Settlement of Investment Disputes established by the Washington Convention of 18 March 1965 on the settlement of investment disputes between states and nationals of other states in the event that the Republic of Bolivia becomes a party to this Convention. Until that moment the dispute shall be submitted to conciliation or arbitration procedures to be mutually agreed upon on the basis of the Washington Convention.

(3) The entities mentioned in paragraph 2) (a) and (b) of this Article shall determine their own procedures. The award rendered by each of the entities is final and binding for both parties to the disputes.

(4) Neither Contracting Party shall pursue through diplomatic channels any matter referred to in paragraph 2) a) and b) of this Article until the proceedings have been terminated and a Contracting Party has failed to abide by or to comply with the award rendered either by the competent court of justice of one Contracting Party or by the International Center for the Settlement of Investments Disputes.

Article 13. Disputes between Contracting Parties

(1) Disputes between Contracting Parties regarding the interpretation or application of the provisions of this Agreement shall be settled through diplomatic channels.

(2) If both Contracting Parties cannot reach an agreement within six months from the date on which either Contracting Party has requested in writing the settlement of disputes to the other Contracting Party, the disputes shall, upon request of either Contracting Party, be submitted for settlement to an arbitral tribunal.

(3) The arbitral tribunal mentioned in paragraph 2) of this Article shall be composed of three arbitrators. Each Contracting Party shall appoint one arbitrator. The two arbitrators shall nominate the third arbitrator who is a national of a third State which has diplomatic relations with both Contracting Parties, and the third arbitrator shall be appointed the chairman of the tribunal by both Contracting Parties.

(4) If one of the Contracting Parties has not appointed its arbitrator and has not followed the invitation of the other Contracting Party to make that appointment within two months after its appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(5) If both arbitrators cannot reach an agreement about the choice of the chairman within two months after their appointment, the latter shall be appointed upon the request of either Contracting Party by the President of the International Court of Justice.

(6) If, in the cases specified under paragraphs 4) and 5) of this Article, the President of the International Court of Justice is prevented from carrying out the said function or if he is a national of either Contracting Party, the appointment shall be made by the Vice-President, and if the latter is prevented or if he is a national of either Contracting Party, the appointment shall be made by the next senior Judge of the Court who is not a national of either Contracting Party.

(7) The arbitral tribunal shall determine its own procedures. The arbitral tribunal shall decide its award by a majority of votes. Such award is final and binding for each Contracting Party.

(8) Each Contracting Party shall bear the cost of its counsel in the arbitral proceedings. The cost of the chairman and the remaining costs shall be borne in equal parts by both Contracting Parties. The arbitral tribunal may, however, in its decision direct that a higher proportion of cost shall be borne by one of the two Contracting Parties.

Article 14. Observance of Commitments

Either Contracting Party shall constantly guarantee the observance of the commitments it has entered into with respect to the investments of the nationals or companies of the other Contracting Party.

Article 15. Entry Into Force, Renewal and Termination

(1) This Agreement shall enter into force on the day when both Governments have notified each other that they have complied with their respective internal procedures for the conclusion and entry into force of this Agreement and shall remain binding for a period of ten years. Unless written notice of termination is given six months before the expiration of this period, the Agreement shall be considered as renewed on the same terms for a period of two years, and so forth.

(2) In case of official notice as to the termination of the present Agreement, the provision of Article 1 to 14 shall continue to be effective for a further period of ten years for investments made before official notice was given.

Done in duplicate at Seoul this 1st day of April 1996 in the Korean, Spanish and English languages, all texts being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

FOR THE GOVERNMENT OF THE REPUBLIC OF BOLIVIA